

AMENDMENT AGREEMENT NO. 3

APR 4 1985 - 1 55 PM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT AGREEMENT NO. 3, dated as of March 21, 1985 ("Amendment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY,\* as Trustee ("Trustee") and BRAE TRANSPORTATION, INC., formerly BRAE CORPORATION (the "Company").

W I T N E S S E T H:

WHEREAS, the Company and the Trustee have entered into an Equipment Trust Agreement dated as of May 1, 1980, as amended by Amendment Agreement No. 1 dated July 18, 1980 and Amendment Agreement No. 2 dated September 9, 1982 (as so amended, the "Trust Agreement"); and

WHEREAS, the Trustee has received a Written Direction from Teachers Insurance and Annuity Association of America as the Holder of all of the outstanding Trust Certificates; and

WHEREAS, the Company and the Trustee now desire to further amend the Trust Agreement as hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. The terms used in this Amendment which are defined in the Trust Agreement have the same meanings herein as specified therein.

2. The definition of "Permitted Investments" appearing on Schedule C of the Trust Agreement is amended by the addition of the following paragraph at the end of such definition:

(3) any notes received by the Company or any Subsidiary of the Company as consideration for the sale and transfer of the stock of National Piggyback Services, Inc. (together with BRAE Surface Transportation Group, Inc. and the National Piggyback Specialized Commodities operations) and BRAE Brokerage Services, Inc. (together with Intermodal Brokerage Services, Inc.).

3. Section 6.05 (Negative Covenants) of the Trust Agreement is amended by the addition of the following Subsection at the end of Section 6.05:

(o) Permitted Transaction. Notwithstanding any term, covenant, agreement, condition, prohibition, restriction or provision in the Agreement to the contrary, the Company and/or its Restricted Subsidiaries and/or its Unrestricted Subsidiaries may sell and transfer the stock of National Piggyback Services, Inc. (together with BRAE Surface Transportation Group, Inc. and the National

\*National Association,

Piggyback Specialized Commodities operations) ("National Piggyback Services") and BRAE Brokerage Services, Inc. (together with Intermodal Brokerage Services, Inc.) ("BRAE Brokerage Services") for a purchase price of not less than \$55 million, payable in a combination of cash and notes (with maturities not in excess of ninety days), representing at least \$22 million for National Piggyback Services and the balance for BRAE Brokerage Services; provided further that the proceeds from such transaction (including the cash proceeds received upon payment of the notes) shall be used only for general corporate purposes and shall not be used to pre-pay indebtedness of the Company and/or its Restricted Subsidiaries; and provided further that at least \$25 million of the proceeds shall be invested in Investments coming within the exclusion of clause (ii) from the definition of Restricted Investments or used to pay the principal portion of the debt service of the Company and its Restricted Subsidiaries outstanding as of the date hereof to the extent that in any period subsequent to March 31, 1985 the principal portion of the debt service of the Company and its Restricted Subsidiaries has been in excess of the Cash Flow of the Company and its Restricted Subsidiaries for such period. Cash Flow of the Company and its Restricted Subsidiaries for any period shall mean the net income of the Company and its Restricted Subsidiaries plus the amount of any provision for taxes for such period (less any taxes actually paid during such period) plus an amount equal to the amount of depreciation for such period.

4. BRAE Corporation will guarantee the outstanding indebtedness of BRAE Transportation, Inc. as set forth in the Guaranty attached as Exhibit A to this Agreement. BRAE Corporation shall further agree for the benefit of the Holder that it shall not without consent of the Holder pay any dividend to its shareholders which would constitute a dividend related to a partial or complete liquidation of BRAE Corporation.

5. Except as amended hereby, the Trust Agreement remains in full force and effect in accordance with the terms thereof.

6. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single instrument.

7. The provisions of this Amendment and all rights and obligations of the parties hereunder shall be governed by the laws of the State of New York.

8. The Company shall, at its expense, cause this Amendment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 as soon as possible.

IN WITNESS WHEREOF, the Company and the Trustee have each caused this Agreement to be executed by their respective duly authorized officers and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION

By: 

Vice President

(Corporate Seal)

Attest: 

BRAE TRANSPORTATION, INC.

By: 

President

(Corporate Seal)

Attest: 

ASSISTANT SECRETARY

\*National Association, a national  
banking association

STATE OF CONNECTICUT )  
 )  
COUNTY OF HARTFORD )

SS.

On the 20<sup>TH</sup> day of MARCH, 1985, before me  
personally appeared D.E. SMITH, to me personally known, who,  
being by me duly sworn, says that he is VICE PRESIDENT of THE  
CONNECTICUT BANK AND TRUST COMPANY, \*XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXX, that one of the seals affixed to the foregoing  
instrument is the seal of said corporation and that said  
instrument was on MARCH 20, 1985 signed and sealed on behalf of  
said corporation by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument was  
the free act and deed of said corporation.

Ruth A Emerson  
Notary Public  
RUTH A. EMERSON  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1989

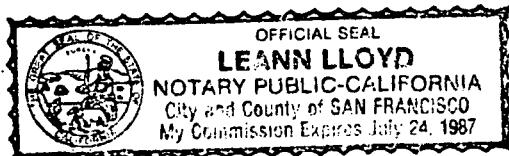
(SEAL)

RUTH A. EMERSON  
NOTARY PUBLIC  
My Commission Expires MY COMMISSION EXPIRES MARCH 31, 1989

STATE OF CALIFORNIA )  
 )  
CITY AND COUNTY OF SAN FRANCISCO )

SS.

On the 29<sup>th</sup> day of MARCH, 1985, before me  
personally appeared LAWRENCE W. BRISCOE, to me personally known, who,  
being by me duly sworn, says that he is PRESIDENT of BRAE  
TRANSPORTATION, INC., a Delaware corporation, that one of the  
seals affixed to the foregoing instrument is the seal of said  
corporation and that said instrument was on MARCH 29, 1985  
signed and sealed on behalf of said corporation by authority of  
its Board of Directors, and he acknowledged that the execution of  
the foregoing instrument was the free act and deed of said  
corporation.



(SEAL)

My Commission Expires JULY 24, 1987

Leann Lloyd  
Notary Public

GUARANTY

For good and valuable consideration, the receipt of which is acknowledged, and in further consideration of the execution of Amendment Agreement No. 3 to that certain Equipment Trust Agreement dated as of May 1, 1980 between The Connecticut Bank and Trust Company and BRAE Transportation, Inc. (formerly BRAE Corporation), as amended, the undersigned ("Guarantor"), unconditionally guarantees the full and prompt payment by BRAE Transportation, Inc. ("Obligor") of the indebtedness of Obligor arising under the agreements appearing on Schedule 1 ("Agreements"). Such guarantee of payment shall include the prompt payment of principal and interest including any amounts due by reason of acceleration or the exercise of other rights or remedies under the Agreements.

The Guarantor agrees that it shall not be necessary, as a condition to enforce this Guaranty, that suit be first instituted against Obligor or that any rights or remedies against Obligor be first exhausted. It being understood and agreed that the liability of the Guarantor hereunder shall be primary, direct, and in all respects unconditional.

Irrespective of the lack of any notice to or consent of Guarantor, its obligations hereunder shall shall not be impaired in any manner whatsoever by any

- (a) new agreements (other than those expressly releasing this Guaranty) or obligations of Obligor; amendments, extensions, modification, renewals or waivers of default as to any existing or future agreements or obligations of Obligor or third parties or further extensions of credit; or
- (b) adjustments, compromises or releases of any obligations of Obligor, Guarantor or other parties or exchanges, releases or sales of any security of Obligor, Guarantor or other parties.

Notice of acceptance hereof, of default or nonpayment by Obligor or any other parties, of presentment, protest and demand, and of all other matters of which Guarantor otherwise might be entitled, is waived.

Legal rights and obligations hereunder shall be determined in accordance with the laws of the State of New York.

The undersigned corporation warrants for itself that it is authorized by law and by its articles of incorporation to execute this Guaranty, and the officers signing the same warrant

that they are specifically authorized thereunto by a duly adopted resolution of the board of directors or the bylaws of the corporation.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_\_

ATTEST:

BRAE CORPORATION

By \_\_\_\_\_

Title \_\_\_\_\_